

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PILRANG BAE OWA,

Plaintiff,

v.

FRED MEYER STORES, et al.,

Defendants.

CASE NO. C16-1236 RAJ

ORDER

This matter comes before the Court on Defendant Fred Meyer Stores' ("Defendant" or "Fred Meyer") motion to compel discovery and motion to compel an independent medical examination. Dkt. # 89¹. Plaintiff opposes the motion. Dkt. # 97.

The Court has broad discretion to control discovery. *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002); *see also Avila v. Willits Env'tl. Remediation Trust*, 633 F.3d 828, 833 (9th Cir. 2011), *In re Sealed Case*, 856 F.2d 268, 271 (D.C. Cir. 1988). That

¹ The Court strongly disfavors footnoted legal citations. Footnoted citations serve as an end-run around page limits and formatting requirements dictated by the Local Rules. *See* Local Rules W.D. Wash. LCR 7(e). Moreover, several courts have observed that "citations are highly relevant in a legal brief" and including them in footnotes "makes brief-reading difficult." *Wichansky v. Zowine*, No. CV-13-01208-PHX-DGC, 2014 WL 289924, at *1 (D. Ariz. Jan. 24, 2014). The Court strongly discourages the Parties from footnoting their legal citations in any future submissions. *See Kano v. Nat'l Consumer Co-op Bank*, 22 F.3d 899-900 (9th Cir. 1994).

1 discretion is guided by several principles. Most importantly, the scope of discovery is
2 broad. A party must respond to any discovery request that is not privileged and that is
3 “relevant to any party’s claim or defense and proportional to the needs of the case,
4 considering the importance of the issues at stake in the action, the amount in controversy,
5 the parties’ relative access to relevant information, the parties’ resources, the importance
6 of the discovery in resolving the issues, and whether the burden or expense of the
7 proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

8 If a party refuses to respond to discovery, the requesting party “may move for an
9 order compelling disclosure or discovery.” Fed. R. Civ. P. 37(a)(1). “The party who
10 resists discovery has the burden to show that discovery should not be allowed, and has
11 the burden of clarifying, explaining, and supporting its objections.” *Cable & Computer*
12 *Tech., Inc. v. Lockheed Saunders, Inc.*, 175 F.R.D. 646, 650 (C.D. Cal. 1997).

13 Defendant argues that Plaintiff has continually failed to adequately disclose
14 computations for future medical expenses, lost earning capacity, or future earnings. Dkt.
15 # 89 at 6. Defendant contends that Plaintiff has not produced evidence beyond 2016-17
16 to support a wage loss claim. *Id.* at 8. The Court finds that these calculations are
17 relevant and instrumental to the resolution of this matter, and the Court agrees that the
18 record supports Defendant’s motion. Moreover, Plaintiff’s brief in opposition does not
19 sufficiently respond to these issues. Accordingly, the Court **GRANTS** Defendant’s
20 motion; Plaintiff may not present evidence beyond the tax returns she already produced
21 to support her claims for wage loss, future medical expenses, and lost earning capacity.

22 Defendant further moves the Court for an order compelling Plaintiff to produce
23 responses with regard to five discovery requests. *Id.* at 9-11 (seeking production for
24 Interrogatory Nos. 4, 5, 7, 11 and Request for Production No. 4). Each of the requests are
25 directly related to Plaintiff’s claims and theories of recovery, and Plaintiff’s responses are
26 necessary for Defendant’s defense preparation. Plaintiff’s brief in opposition does not
27 adequately explain why she has failed to diligently respond to Defendant’s requests. The

1 Court therefore **GRANTS** the motion and orders Plaintiff to supplement each response
2 and produce discovery no later than ten (10) days from the date of this order. If Plaintiff
3 has issues complying with this deadline, she is directed to immediately meet and confer
4 with Defendant's counsel to reach a mutually agreed upon production timeline.

5 Finally, Defendant moves the Court for an order compelling Plaintiff to sit for an
6 independent medical examination (IME) with Dr. Vandenberg. *Id.* at 11. The Court has
7 discretion to do so for good cause under Rule 35. *See* Fed. R. Civ. P. 35(a)(1) ("The
8 court . . . may order a party whose mental or physical condition . . . is in controversy to
9 submit to a physical or mental examination by a suitably licensed or certified
10 examiner."). Plaintiff does not appear to oppose this request, as she had previously
11 submitted available dates for an IME in December 2017. Dkt. # 97 at 10. The Court
12 finds good cause to order Plaintiff to sit for an IME with Dr. Vandenberg. The Court
13 therefore **GRANTS** Defendant's motion and orders the parties to meet and confer to
14 mutually agree on a date and time to complete this exam. However, the Court instructs
15 the parties to agree on a date and time that is within fourteen (14) days from the date of
16 this Order.

17 For the foregoing reasons, the Court **GRANTS** Defendant's motion. Dkt. # 89.
18 This Order does not operate to extend any discovery deadlines that have already passed;
19 it is narrowly tailored to the issues presented in Defendant's motion.

20 Dated this 5th day of February, 2018.

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24 The Honorable Richard A. Jones
25 United States District Judge
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